

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

FILED

ANTHONY DeFRANCO,
Plaintiff,

V.

WILLIAM WOLFE, et al.,
Defendants.

:
: No. 04-230-E
: Magistrate Judge Baxter '06 AUG 11 A9:34
: District Judge Cohill
:
: CLERK
: U.S. DISTRICT COURT /
:

**MOTION FOR ORDER TO COMPLY WITH SUBPOENA
AND COMPEL PRODUCTION OF DOCUMENT**

AND NOW, comes plaintiff, respectfully requesting this Honorable Court to issue an Order compelling the defendants' agent to answer the subpoena and produce his writings and support avers the following:

1. As this Court is aware, during the preliminary injunction hearing (and before) a Dr. Eugene Pulmuller, Administrative Psychiatrist Director for the Western Region of the Department of Corrections, made progress notes in Plaintiff's medical file that this Court and Plaintiff could not understand what Dr. Pulmuller had written.
2. On the progress report it was clearly noted that the word "Double-Cell" was written. This report bears directly on Plaintiff's mental health and his need of z-code housing status.
3. Plaintiff has sent Dr. Pulmuller a subpoena on July 24, 2006, requesting that he decipher his progress notes on Plaintiff. [See attached Exhibit "A", subpoena and attached progress notes by Dr. Pulmuller]. These notes need to be deciphered as it is *material* to this case.
4. Plaintiff is requesting this Honorable Court now issue an Order upon Dr. Pulmuller to completely decipher his progress notes on the Plaintiff. As stated above, Dr. Pulmuller is the Western Region Department of Corrections Psychiatrist Director. Thus, covering S.C.I. Albion.

Therefore, the only address available for Dr. Pulmuller is, Secretary's Office, Department of Corrections, 2520 Lisburn Avenue, Camp Hill, PA 17001.

5. Pursuant to Rule 45 of the Federal Rules of Civil Procedure, Plaintiff may issue a subpoena upon a non-party. These progress notes are material and show and/or infer the need of z-code status, and further show Plaintiff's mental health state by the Department of Corrections very own head psychiatrist.

WHEREFORE, Plaintiff prays this Honorable Court will issue an Order directing Dr. Pulmuller to decipher his progress notes that he conducted on Plaintiff and abide by the subpoena issued.

Date: *Aug. 9th, 2005*

Respectfully submitted,

Anthony DeFranco
Anthony DeFranco CZ-3518
10745 Route 18
Albion, Pa. 16475-0002

Certificate of Service
Service was made by U.S. First
Mail to Attorney General at
564 Forbes Ave., Pgh. Pa. 15219, this date

AO88 (Rev. 1/94) Subpoena in a Civil Case

Issued by the
UNITED STATES DISTRICT COURT

WESTERN**DISTRICT OF****PENNSYLVANIA****ANTHONY DeFRANCO****V.****WILLIAM WOLFE, et al.
OO****TO: Eugene Pulmuller, Psychiatrist
For Western Region of Pa. (DOC)****SUBPOENA IN A CIVIL CASE****Case Number:**¹ **04-230-E**

This subpoena is invalid, and imposes no duty on the person served to appear anywhere, if it was not served together with the fees for one days attendance and mileage. FURTHER, this subpoena imposes no duty on anyone to produce documents or things at his or her own expense.

- ☐ **YOU ARE COMMANDED** to appear in the United States District court at the place, date, and time specified below testify in the above case.

PLACE OF TESTIMONY**COURTROOM****DATE AND TIME**

- ☐ **YOU ARE COMMANDED** to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION**DATE AND TIME**

- ☒ **YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **Attached hereto is a copy of Dr. Pulmuller's notes on plaintiff---please completely decipher what they say and complete meaning for everything written by him.**

PLACE**Mail to: Anthony DeFranco CZ-3518, 10745 Route 18
Albion, Pa. 16475-0002****DATE AND TIME****Within 20 days**

- ☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES**DATE AND TIME**

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)**DATE***A.Y. Barth, Jr.***ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER**

(See Rule 45, Federal Rules of Civil Procedure, Parts C & D on next page)

¹ If action is pending in district other than district of issuance, state district under case number.

PROOF OF SERVICE

DATE		PLACE
July 24, 2006		From SCI Albion (10745 Rt. 18 Albion, Pa.)
SERVED	Dr. Pulmiller, Central Office 2520 Lisburn Ave., Camp Hill, Pa. 17001	
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
above	U.S. 1st Class Mail (mail receipt)	
SERVED BY (PRINT NAME)	TITLE	
Anthony DeFranco	Plaintiff	

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

7/24/06
DATE

SIGNATURE OF SERVER

10745 Rt. 18
ADDRESS OF SERVER

Albion, Pa. 16475-0802

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend

trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Date/Time	Prob #	Discipline Abbreviation	Remarks Subjective, Objective, Assessment, Plan
4/24/04	4	4	<p>⑤ anger + impulsivity + paranoia SR in control of BZD in prison per day 3 doses a week, no downing since his out of hate zone, had some signs Panic, (5) 1st, P-2000, L-100 double called</p> <p>⑥ politely answered, no answer</p> <p>⑦ panic by his clear ASPD</p> <p>⑧ learn pt on BZD 2 clear use</p> <p>E PALMUELLO M.D.</p>
5/28/04 1220	B	Psych	<p>S: Pt related that he is maintaining a stable mental state, devoid of prominent affective symptoms or neurovegetative disturbance. His anxiety remains under control. Still seeking 2-code status due to his potential for assault when with even minor provocation.</p> <p>O: msc as per entry</p> <p>A: Panic Disorder 5 agoraphobia ASPD</p> <p>P: Cont regimen as before</p> <p>Angela Lindemuth, D.O.</p>